

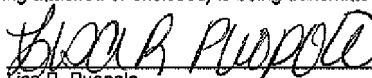
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Basil Karanikos et al.
Serial No.: 10/658,925
Confirmation No.: 3129
Filed: September 10, 2003
For: BEVERAGE FILTER CARTRIDGE
Examiner: J. Drodge
Art Unit: 1723

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Dated: October 10, 2008


Lisa R. Puopolo

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is submitted in response to the Examiner's Answer dated August 13, 2008.

The Examiner's Answer re-asserts the bases for rejection of the claims made in the latest Office Action, including the assertion that it would have been obvious to modify the Sylvan cartridge by using a pleated or fluted filter, as taught by Spiteri, to augment the self-supporting aspect of the filter in the pressure-type cartridge. The Examiner's Answer also asserts that it would have been expedient to manufacture the filter element of Sylvan with the pleats/flutes of Spiteri to facilitate handling, packing/packaging, cost-effective production, and provide stiffness to ensure sufficient rigidity to avoid collapse or sagging of the filter when wetted. (See page 6 of the Examiner's Answer.)

Regarding the reason to make such a modification, the Examiner's Answer indicates that a primary concern of Sylvan was to avoid sagging of a coffee filter when wetted and full of grounds,

e.g., because sagging of the filter against the support member walls of the brew basket would largely block the filtration flow and allow only the bottom of the filter member to be used for filtration flow. The Examiner's Answer states that Spiteri also addresses the issue of filter sagging and the desirability of preventing the walls of a coffee filter from sagging when wetted. The Examiner's Answer concludes that avoidance of sagging would increase the effective filtering area and area for filtration flow of coffee. (See page 6 of the Examiner's Answer.)

The majority of these positions reiterated in the Examiner's Answer are addressed in the Appeal Brief, and thus no further response is made here. However, the Examiner's Answer raises a few new issues that Applicant comments on below.

The Examiner's Answer (e.g., at page 9) states that comments made in the Declarations – specifically, regarding the fact that a fluted filter does not have radial rigidity, and is instead radially flexible and would expand upon injection of pressurized water into the cartridge - are speculative and are not accompanied by evidence or actual testing. As an initial matter, these assertions by the Applicant are not new, having been made in the two Declarations and in earlier amendments, and before now the Examiner never questioned their accuracy. In fact, this is the first time that the Examiner has made any mention that evidence or testing might be desirable to support these statements made in the Declarations. Up to this point, the Examiner has impliedly accepted these statements as true, since no objection was made.

Although Applicant could provide evidence of at least one instance in which a fluted filter contacts the cartridge sidewall when pressurized water is injected into the cartridge,¹ Applicant submits that no such evidence is necessary. It is evident from Spiteri itself that its fluted filter is radially flexible. For example, Spiteri describes that the filter may be manufactured and then packaged in a flat condition so as to save packaging space. (Spiteri paragraph 0007). Clearly, the filter cannot be used in a brewer in a flat condition, and so must be opened up, i.e., radially expanded, and placed in a brew basket. Without this ability to radially expand, the filter could not

¹ For example, Applicant has sold cartridges using a fluted filter like that shown in FIG. 1 of the application for well over one year and has observed that the fluted filter in those commercially-available cartridges contacts the cartridge sidewall during and after brewing, which involves the injection of pressurized water into the cartridge.

be used as intended. Further, as anyone who has used a drip coffee brewer can attest, filters used in drip type brewers are expanded radially and contact the brew basket both at the bottom and the sidewalls when coffee grounds and water are introduced into the filter. Thus, the Spiteri filter is understood to be radially flexible based on the Spiteri disclosure itself. Also, one of skill in the art, as stated in the Declarations, would have understood such a fluted filter to be radially flexible and would have expected that a radially flexible filter would expand in a cartridge upon the introduction of pressurized water.

Accordingly, Applicant submits that the Declarant's conclusion, i.e., that one of skill in the art would have expected a fluted filter like that of Spiteri used in a cartridge like that of Sylvan to expand and contact the cartridge sidewall with the introduction of pressurized water into the cartridge, is amply supported by both the disclosure of Spiteri and the physical realities of such an arrangement.

The Examiner's Answer also asserts that Sylvan and Spiteri commonly refer to "self-supporting" as being resistant to sagging against the sidewalls of the brewer container when wetted. This statement is untrue. Both patents use the word "self-supporting," but to refer to different properties, as described in the Appeal Brief. Sylvan uses this term to refer to an ability of the filter to avoid contact with the cartridge sidewalls. (Sylvan col. 2, lines 3-7 and col. 3, lines 10-13, for example). Spiteri uses this term to refer to the ability of the filter to avoid sagging downwardly or inwardly on itself toward the center of the brew basket. (Spiteri paragraphs 0002, 0003, 0007 and 0008). There is absolutely nothing in Spiteri that suggests that the filter does not contact the brew basket sidewall. In fact, the latest Office Action, at pages 7 and 8, admits the filter of Spiteri is understood to contact the sidewalls of the brew basket in a drip-type application, but states that such contacting is understood to mean that only the apexes or splines of the pleats/flutes of the filter contact the sidewalls, with the remainder of the surface area of the filter remaining spaced from the sidewalls. This conclusion in the Office Action is pure speculation since Spiteri makes no mention in this regard. Moreover, Spiteri makes no mention of how the filter would respond to use with pressurized water in a cartridge like that in Sylvan. This is no surprise, though, since Spiteri relates

only to drip-type brewing applications for the filter. Accordingly, Spiteri's use of "self-supporting" does not refer to the filter's ability to avoid contact with the brew basket sidewall when wetted.

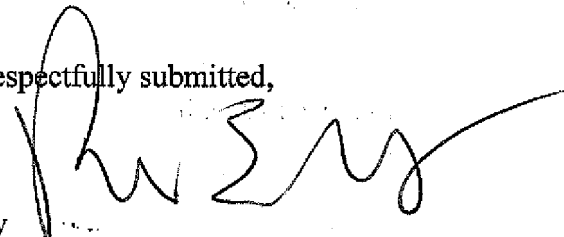
Applicants maintain that the Office Action and Examiner's Answer fail to identify a sustainable reason for making the asserted obvious modification of the Sylvan cartridge. As explained in the Appeal Brief, the various reasons identified in the Office Action are inadequate and/or inaccurate regarding why one of ordinary skill in the art would have used a fluted filter, which was understood to be radially flexible and would likely contact the cartridge sidewalls with the injection of pressurized water, in a cartridge like that of Sylvan, which expressly teaches that the filter should not contact the cartridge sidewall.

CONCLUSION

Because the pending claims patentably distinguish over the asserted combinations of the applied references, and because the Office Action fails to set forth any supportable reason for combining the references in the manner asserted, a sustainable case of obviousness has not been established. Accordingly, the rejection of those claims under 35 U.S.C. §103(a) as purportedly being obvious should be reversed.

Dated: October 10, 2008

Respectfully submitted,



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